

REMARKS

The Amendments

The claims are amended to cancel the subject matter non-elected pursuant to the restriction requirement. Regarding claims 15-17, these claims are amended to remove the recitation of the propellant-containing aerosol embodiment, which was non-elected. It is believed to be clear from the Office Action and statement of the restriction requirement that other inhalable forms of the compositions, e.g., inhalable powders, were considered to be within the elected invention. Claim 1 is amended for grammatical purposes. The claim amendments were not made for purposes of patentability nor do they limit the scope of the broadest claim.

To the extent that the amendments avoid the prior art or for other reasons related to patentability, competitors are warned that the amendments are not intended to and do not limit the scope of equivalents which may be asserted on subject matter outside the literal scope of any patented claims but not anticipated or rendered obvious by the prior art or otherwise unpatentable to applicants. Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Double Patenting Rejection

The rejection of claims 1-14 and 21 for obviousness-type double patenting over U.S. Patent No. 6,706,726 is respectfully traversed. Applicants submit that the generic claims and teachings of the '726 patent do not fairly suggest, for obviousness purposes, the particular combination of the instant claims. However, to expedite prosecution, applicants have filed a terminal disclaimer herewith which overcomes the rejection.

The Provisional Obviousness-type Double Patenting Rejections

The provisional obviousness-type double patenting rejections of claims 1-12 and 21 over claims 1-7 of copending US Ser. No. 11/273,782 and claims 1-7 of copending U.S. Ser. No. 11/274,648 are respectfully traversed.

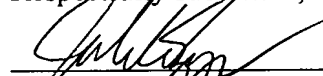
The instant application has an effective US filing date before either of the two copending applications. In accordance with MPEP §804(I)(B)(1), the provisional obviousness-type double patenting rejection(s) in this earlier filed application should be withdrawn thereby permitting this application to issue without need of a terminal disclaimer.

A terminal disclaimer is only required in the later-filed application(s). The MPEP excerpt refers to the instance where three applications are involved and specifically states that a terminal disclaimer is required in only two of the applications. This application, being the earliest, does not require a terminal disclaimer. Accordingly, the provisional rejections should be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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